

BOARD ACTION MEMORANDUM

TO: NCUA Board

DATE: June 2, 2004

FROM: Office of General Counsel

SUBJ: Proposed Rule -
Change in Official or Senior
Executive Officer in Credit Unions
that are Newly Chartered or in
Troubled Condition

ACTION REQUESTED: NCUA Board approval of the attached proposed rule with request for comments (12 C.F.R. §701.14).

DATE ACTION REQUESTED: June 24, 2004.

OTHER OFFICES CONSULTED: Office of Examination and Insurance, Office of Corporate Credit Unions, All Regional Directors.

VIEWS OF OTHER OFFICES CONSULTED: Concur.

BUDGET IMPACT, IF ANY: None.

SUBMITTED TO INSPECTOR GENERAL FOR REVIEW: Yes.

RESPONSIBLE STAFF MEMBERS: Mary Rupp, Staff Attorney, Office of General Counsel.

SUMMARY: As part of NCUA's regulatory review for 2003, staff recommends that the NCUA Board issue the attached proposed rule with request for comments. The proposal amends NCUA's rule concerning the requirement that federally-insured credit unions that are newly chartered or troubled file notice with NCUA prior to adding or replacing a board or committee member or employing or changing the duties of a senior executive officer. The proposed amendments will clarify the relationship between the prior notice provision and the commencement of service provision, so as to eliminate any potential confusion. In addition, the amendments reorganize the requirements in the current rule to make it easier to understand.

RECOMMENDED ACTION: Recommend the Board issue the proposed rule.

ATTACHMENT: Draft Proposed Rule.

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Change in Official or Senior Executive Officer in Credit Unions that are Newly Chartered or Are in Troubled Condition

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA is proposing to revise its rule concerning the requirement that federally-insured credit unions that are newly chartered or troubled file notice with NCUA before adding or replacing a board or committee member or employing or changing the duties of a senior executive officer. The proposed amendments will clarify the relationship between the prior notice provision and the commencement of service provision, so as to eliminate any potential confusion. In addition, the amendments reorganize the requirements in the current rule to make it easier to understand.

DATES: The NCUA must receive comments on or before [Insert date 60 days after publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Proposed Rule 701.14, Change in Official in Newly Chartered or Troubled Credit Unions” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

Section 212 of the Federal Credit Union Act and §701.14 of NCUA's regulations require newly chartered and troubled credit unions to seek NCUA approval before the appointment or employment of directors and senior management officials. 12 U.S.C. 1790a; 12 CFR 701.14. Section 701.14 sets out the substantive and procedural requirements for credit unions seeking approval of an individual. The rule was adopted in 1990 and has had one substantive revision since that time. 55 FR 43084 (October 26, 1990); 64 FR 28715 (May 27, 1999).

The NCUA Board has a policy of continually reviewing NCUA regulations to "update, clarify and simplify existing regulations and eliminate unnecessary and redundant and unnecessary provisions." NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. As a result of NCUA's 2003 review, the Board determined that the Change in Official or Senior Executive Officer rule should be updated.

Summary of Proposed Changes

The only substantive proposed change to the rule is to §701.14(e), the provision dealing with commencement of service. As currently written, this provision states a proposed director, committee member or senior executive officer may serve temporarily until the credit union and the individual are notified in writing of NCUA's approval or disapproval. This provision conflicts with the prior notice requirement in §701.14(c). Section 701.14(c) requires at least 30 days prior notice to NCUA before the addition of a board or committee member or the employment of senior executive officer. There are some exceptions to the prior notice requirement but they are addressed in other sections of the rule. 12 CFR 701.14(d)(2) and (3). To resolve this inconsistency, the Board proposes adopting language in the commencement of service provision that is similar to regulations of the Federal Deposit Insurance Corporation and the other financial regulators. 12 CFR 303.103(b).

The revised provision is redesignated §701.14(d). It provides for commencement of service at the expiration of the 30-day period or any additional time under paragraph (c)(3)(iii) of the section, unless NCUA disapproves the notice before the end of the period.

The proposed rule reorganizes the paragraph structure so that it is easier to read. All of the notice requirements are moved to current paragraph (d) Procedures for Notice of Proposed in Official or Senior Executive Officer. This paragraph is redesignated paragraph (c) and now includes in paragraph (c)(1) the prior notice requirements from current paragraph (c). Current paragraph (d)(2) Waiver of prior notice requirements is redesignated (c)(2)(i) and (iii). Current paragraph (d)(3) Election of directors or credit committee members is retitled Automatic waiver and redesignated (c)(2)(ii).

Current paragraph (d)(1) Filing and acceptance is retitled Filing Procedures, redesignated (c)(3), and broken into three subparts: (i) Where to file; (ii) Contents; and (iii) Processing.

The final change is the redesignation of paragraph (f) as paragraph (e).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. The proposal clarifies the relationship between the waiver of prior notice provision and the temporary service provision, so as to eliminate any potential confusion. The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). NCUA currently has OMB clearance for §701.14's collection requirements (OMB No. 3133-0121).

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule will apply to all federally insured credit unions. NCUA has determined that the proposed amendments will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 - - Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Agency Regulatory Goal.

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR part 701

Credit unions, Senior executive officials.

By the National Credit Union Administration Board on June 24, 2004.

Becky Baker
Secretary of the Board

Accordingly, the National Credit Union Administration proposes to amend 12 CFR part 701 as follows:

PART 701 – ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

2. Amend §701.14 by deleting paragraphs (c) (d) and (e), adding new paragraphs (c) and (d), and redesignating paragraph (f) as paragraph (e) to read as follows:

§701.14 Change in official or senior executive officer in credit unions that are newly chartered or in troubled condition.

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(c) Procedures for Notice of Proposed Change in Official or Senior Executive Officer.

(1) **Prior Notice Requirement.** An insured credit union must give NCUA written notice at least 30 days before the effective date of any addition or replacement of a member of the board of directors or committee member or the employment or change in responsibilities of any individual to a position of senior executive officer if:

- (i) The credit union has been chartered for less than two years; or
- (ii) The credit union meets the definition of troubled condition in paragraph (b)(3) or (4) of this section.

(2) Waiver of Prior Notice. (i) Waiver requests. Parties may petition the appropriate Regional Director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the credit union or the public interest.

(ii) Automatic waiver. In the case of the election of a new member of the board of directors or credit committee member at a meeting of the members of a federally insured credit union, the prior 30-day notice is automatically waived and the individual may immediately begin serving, provided that a complete notice is filed with the appropriate Regional Director within 48 hours of the election. If NCUA disapproves a director or credit committee member, the board of directors of the credit union may appoint its own alternate, to serve until the next annual meeting, contingent on NCUA approval.

(iii) Effect on disapproval authority. A waiver does not affect the authority of NCUA to issue a Notice of Disapproval within 30 days of the waiver or within 30 days of any subsequent required notice.

(3) Filing procedures. (i) Where to file. Notices will be filed with the appropriate Regional Director or, in the case of a corporate credit union, with the Director of the Office of Corporate Credit Unions. All references to Regional Director will, for corporate credit unions, mean the Director of Office of Corporate Credit Unions. State-chartered federally insured credit unions will also file a copy of the notice with their state supervisor.

(ii) Contents. The notice must contain information about the competence, experience, character, or integrity of the individual on whose behalf the notice is submitted. The Regional Director or his or her designee may require additional information. The information submitted must include the identity, personal history, business background, and experience of the individual, including material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which the individual is a party and any criminal indictment or conviction of the individual by a state or federal court. Each individual on whose behalf the notice is filed must attest to the validity of the information filed. At the option of the individual, the information may be forwarded to the Regional Director by the individual; however, in such cases, the credit union must file a notice to that effect.

(iii) Processing. Within ten calendar days after receiving the notice, the Regional Director will inform the credit union either that the notice is complete or that additional, specified information is needed and must be submitted within 30 calendar days. If the initial notice is complete, the Regional Director will issue a written decision of approval or disapproval to the individual and the credit union within 30 calendar days of receipt of the notice. If the initial notice is not complete, the Regional Director will issue a written decision within 30 calendar days of receipt of the original notice plus the amount of time the credit union takes to provide the requested additional information. If the additional information is not submitted within 30 calendar days of the Regional Director's request, the Regional Director may either disapprove the proposed individual or review the notice based on the information provided. If the credit union and the individual have submitted all requested information and the Regional Director has not issued a written decision within the applicable time period, the individual is approved.

(d) Commencement of Service. A proposed director, committee member, or senior executive officer may begin service after the end of the 30-day period or any other

additional period as provided under paragraph (c)(3)(iii) of this section, unless the NCUA disapproves the notice before the end of the period.

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